

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508 - Room 7008
Cincinnati, OH 45201

Date: JUL 08 2003

Employer Identification Number:
[REDACTED]

Person to Contact:
[REDACTED]

Contact Telephone Numbers:
[REDACTED] Phone
[REDACTED] FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

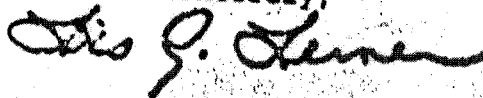
You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

- 1. A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,



Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

[REDACTED]
[REDACTED]
The information submitted indicates that your organizational document is your By-Laws and you signed a declaration stating the By-Laws were adopted in [REDACTED]. You submitted Form 1023, Application for Recognition of Exemption under section 501(c)(3) of the Internal Revenue Code on November 18, 2002.

The By-Laws states, in part, the goals of your organization are to assure that every active member within the association is afforded the opportunity to achieve his/her highest potential and maximize his/her talents in the field of basketball officiating and to assure that [REDACTED] are given an equal opportunity to referee contests in the public and private school systems.

The By-Laws indicates membership in the organization will consist of [REDACTED] whose knowledge, skills and abilities are utilized to fulfill the management objectives of this association.

In the 1023 application you stated that the organization conducted training activities involving basketball classes held in July through October every year. You also stated that your organization provided scholarships to members for improvement in officiating and it pays for specific camp attendance and to enhance officiating skills. You indicated that requirements for membership where active/inactive basketball officials and fees were \$[REDACTED] per year.

In your response to our letter dated [REDACTED] you stated that your organization provided training for officials to improve their officiating skills. This includes on court training and classroom sessions to review rules of basketball. Quarterly classroom sessions are also offered to review new basketball officials. Classes are open to members of the general public. You indicated that the percentage of time spent by your organization on activities were [REDACTED] for training, [REDACTED] for testing, [REDACTED] for rules review, and [REDACTED] for meeting plans.

In our letter [REDACTED] we asked you to provide additional information regarding the officiating opportunities program that was listed in the pamphlet you submitted with your application. We obtained verbal confirmation with your contact person that the officiating opportunities program was referral service for your members in which they receive employment opportunities. We asked you what percentage of time does your organization spend conducting this program and why your organization conducts this service.

In your letter dated [REDACTED] you indicated that your organization provided referral services for all basketball officials interested in improving their skills. You indicated that your organization spends [REDACTED] of its time conducting the referral services

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for interested individuals and this service is not limited to members of the organization. You state the referral service is divided into two subdivisions. These subdivisions are training programs and officiating opportunities. The training program includes rules clinics, floor mechanics, on-floor demonstrations, video critique, and veteran evaluations. You state, in part, that your organization is providing the officiating opportunities service without the exchange of fees for the individuals receiving the service.

In your letter dated [REDACTED] you stated that the [REDACTED] % of time spent conducting the referral service can be broken down into 60 - 20 in which the organization spends 60% of the time educating the officials. Therefore, the remaining 20% of your time spent is conducting the officiating referral service.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirements of section 501(c)(3), it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, (1945), 1945 C.B. 375, the Supreme Court determined that while some activities of the organization under consideration were educational, a substantial purpose of the organization was to promote business, and thus the organization was not operated for exclusively educational purposes.

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In American Institute for Economic Research v. United States, 157 Ct. Cl. 548; 302 F.2d 934; 1962 U.S. Ct. Cl., the court found that the organization which was providing investment advice to subscribers for a fee was providing services of organizations that are commonly associated with a commercial purpose. Further, the court determined that due to these commercial activities the organization was not operated exclusively for educational purposes and did not meet the requirements of the operational test for exemption under section 501(c)(3).

Revenue Ruling 61-170, 1961-2 CB112 describes an association composed of professional duty nurses and practical nurses which supports and operates a nurses' registry to afford greater employment opportunities. Public participation in the management and support of the organization is negligible. This is evident by the fact the organization is supported primarily from members and is controlled by a board of trustees composed of professional nurses without public participation of any kind. The service found that the organization was primarily engaged in the performance of personal services by operating an employment service principally for the benefits of its members. This activity served a private rather than a public interest and it engaged in a business normally carried on as a for profit activity. Therefore, the organization was not operated exclusively for charitable, educational or any other purposes within the meaning of 501(c)(3) of the Code.

You state the activities of your organization are educational and charitable in nature. You state you are educating basketball officials in their line of work by conducting the training programs. You indicate the referral service is a part of this educational activity.

The training program may be considered an educational activity, However, as stated in the Better Business Bureau of Washington, D.C., Inc. v. United States 326 U.S. 279, (1945), 1945 C.B. 375 court case, an organization that has a substantial activity of a nonexempt nature is not operated exclusively for educational purposes and therefore doesn't qualify for exemption under 501(c)(3). A substantial activity of your organization is operating the officiating opportunities referral service. This referral service is used by these individuals to find employment opportunities as basketball officials. This is a commercial activity that is normally carried on as a trade or business.

You state that you are providing the officiating opportunities referral service without charge. However, the only sources of financial support for your organization are membership fees. One of the benefits your members receive in return for this fee is the referral service. Therefore, your organization is receiving a fee for

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this service. Your organization is similar to the organization in the American Institute for Economic Research v. United States, 157 Ct. Cl. 548; 302 F.2d 934; 1962 U.S. Ct. Cl., court case in that you are providing a service for a fee and that service is normally carried on as a commercial activity. Due to the operation of a referral service you are not operated exclusively for educational purposes.

You are similar to the organization described in Revenue Ruling 61-170; you are providing a service that is similar to an employment agency. The officiating opportunities referral service is helping participants in your program find employment as basketball officials. While this is not your primary activity, the referral service is a substantial activity for your organization. This is a direct private benefit for those individuals. In addition, this activity is commercial in nature and not furthering a purpose within the meaning of section 501(c)(3) of the Code.

Based upon the above facts, we have determined that your organization does not meet the operational test for exemption under section 501(c)(3) because the activities of your organization are not exclusively educational or charitable in nature. The referral service is a substantial activity that is normally carried on as a commercial activity and it is providing a direct private benefit to the participants.

In order to qualify for exemption under section 501(c)(3) of the Code, organizations must meet both the organizational and operational tests. Since your organization does not meet the operational test for exemption under section 501(c)(3), we have determined that you do not qualify for exemption under section 501(c)(3) of the Code.

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

JUL 08 2003

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption

☐ Revocation of exemption, effective.

☐ Modification of exemption from section 501(c)() to section 501(c)(), effective

☐ Classification as a private foundation described in section 509(a), effective

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature Instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date